

DHS BORDER SERVICES CONTRACTS REVIEW ACT

OCTOBER 2, 2023.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. GREEN of Tennessee, from the Committee on Homeland Security, submitted the following

R E P O R T

[To accompany H.R. 4467]

[Including cost estimate of the Congressional Budget Office]

The Committee on Homeland Security, to whom was referred the bill (H.R. 4467) to direct the Under Secretary for Management of the Department of Homeland Security to assess contracts for covered services performed by contractor personnel along the United States land border with Mexico, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

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The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “DHS Border Services Contracts Review Act”.

SEC. 2. ASSESSMENT OF CONTRACTS FOR COVERED SERVICES BY THE DEPARTMENT OF HOMELAND SECURITY.

(a) REPORT.—

(1) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act, the Under Secretary for Management of the Department of Homeland Security, in consultation with appropriate officials of the Department, shall submit to the appropriate congressional committees a report regarding active contracts for covered services of the Department awarded on or before—

- (A) September 30, 2023, or
- (B) the date of the enactment of this Act,

whichever occurs later.

(2) ELEMENTS.—The report required under paragraph (1) shall include the following:

(A) The criteria used by the Department of Homeland Security to determine whether contractor personnel were necessary to assist the Department in carrying out its mission along the United States land border with Mexico.

(B) An analysis of the purpose, quantity, and location of contractor personnel to perform covered services of the Department with respect to effectively—

- (i) addressing mission needs along such border; and
- (ii) enhancing the capability of Department personnel to perform primary mission responsibilities, including the number of Department personnel not removed from their primary mission responsibilities by reason of the performance of covered services by contractor personnel.

(C) An assessment with respect to the benefits of contractor personnel performing covered services, including whether the performance of such services by contractor personnel is more efficient or effective than the performance of such services by Department employees.

(D) An assessment of opportunities to increase the efficiency of the Department with respect to contracting, including whether Department-wide contract vehicles for covered services would be the most cost effective option for the performance of covered services.

(E) A strategy to improve the procurement and delivery of covered services through contracts during the five-year period beginning on the date of the enactment of this Act to—

- (i) achieve the best value for the Department through the use of full and open competition; and
- (ii) ensure no lapse in the performance of such services.

(F) Recommendations based on findings resulting from the analysis and assessments required in subparagraphs (B) through (D).

(G) Any other information relating to contracts for covered services that the Under Secretary for Management determines appropriate.

(b) IMPLEMENTATION PLAN.—

(1) IN GENERAL.—The Under Secretary for Management shall submit with the report required under subsection (a) a plan to implement the recommendations and strategy contained in such report to enhance coordination, minimize overlap, and increase cost effectiveness among contracts for covered services.

(2) BRIEFING.—Not later than 180 days after the date on which the Under Secretary for Management submits the report required under subsection (a) and the plan required under paragraph (1) and every 180 days thereafter until such plan is fully implemented, the Under Secretary, or the designee of the Under Secretary, shall provide to the appropriate congressional committees a briefing with respect to the status of such implementation.

(c) PROHIBITION ON FUNDING.—No funds are authorized to be appropriated to carry out this section. This section shall be carried out using amounts otherwise authorized to be made available for such purposes.

(d) DEFINITIONS.—In this section:

(1) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term “appropriate congressional committees” means—

- (A) the Committee on Homeland Security of the House of Representatives; and
- (B) the Committee on Homeland Security and Governmental Affairs of the Senate.

(2) CONTRACT FOR COVERED SERVICES.—The term “contract for covered services” means a contract (with a total contract value of \$50,000,000 or more in 2023 constant dollars, inclusive of contract options) relating to the procurement of covered services for the Department of Homeland Security.

(3) COVERED SERVICES.—The term “covered services” means, with respect to the United States land border with Mexico, any service, including related to border security, provided by a contractor to be used by the Department.

PURPOSE AND SUMMARY

The “DHS Border Services Contracts Review Act,” directs the Under Secretary for Management (USM) of the Department of Homeland Security (DHS) to assess active contracts for covered services performed by contractor personnel along the United States land border with Mexico. This legislation specifically applies to contracts with a value of \$50,000,000 or more that were awarded on or before September 30, 2023, or the date of the enactment of this Act, whichever occurs later.

H.R. 4467 requires the USM to submit to Congress a report with recommendations on active contracts utilized for border support services, including a strategy to improve the procurement and delivery of services through such contracts. Additionally, this legislation also requires the USM to provide Congress with an implementation plan for the recommendations and strategy contained in the report. Lastly, this bill requires the USM to brief Congress on the status of the implementation plan.

BACKGROUND AND NEED FOR LEGISLATION

In recent years, the volume of migrant encounters along the U.S.-Mexico border has necessitated DHS to secure goods and services from contractors to care for migrants taken into custody by U.S. Customs and Border Protection (CBP). The essential services provided by contractors help ensure that our dedicated Border Patrol agents and CBP officers can remain focused on what they do best—securing our border. Unfortunately, DHS has had issues with respect to awarding such contracts. For example, the DHS Office of Inspector General (OIG) found that DHS’ response to the 2019 surge in migrant encounters on the Southwest border required “forethought, multi-component planning, and a coordinated response, which ultimately did not occur.” The OIG found that the surge stretched CBP operations and strained the resources of DHS partners; as a result, there was severe overcrowding and prolonged migrant detention at CBP holding facilities. Despite receiving supplemental funding from Congress to address its operational needs for the surge, by the time CBP contracted for additional facilities to house migrants, the bulk of the surge had passed.¹

Further, in September 2020, the DHS OIG issued a management alert “to advise the Department of Homeland Security and U.S. Customs and Border Protection (CBP) of the urgency and short timeframe to award a new medical services contract to support operations on the Southwest border.” At that time, CBP had fewer than 30 days before its contract for medical services was set to expire. The OIG stated, “A lapse in this contract could jeopardize the health and safety of migrants in CBP custody, as well as that of U.S. Border Patrol agents, CBP officers, and staff, especially during the current pandemic.” Due to planning delays, CBP issued a

¹ “DHS’ Fragmented Approach to Immigration Enforcement and Poor Planning Resulted in Extended Migrant Detention during the 2019 Surge (OIG-21-29),” DHS Office of Inspector General, (Mar. 18, 2021), available at <https://www.oig.dhs.gov/sites/default/files/assets/2021-03/OIG-21-29-Mar21.pdf>.

bridge contract—a noncompetitive contract with the incumbent contractor—preventing the government from receiving the benefits of full and open competition.²

While the issue with the specific contract in the OIG management alert has since been resolved, the number of migrants encountered along the U.S.-Mexico border continues to put an enormous strain on DHS resources. Since the start of 2021, CBP has encountered more than 5.79 million migrants along the Southwest border.³ Given this continuing trend, it is imperative that DHS provides visibility into Southwest border-related contracts, including those related to migrant detention, so that Congress may continue proper oversight and ensure that DHS personnel remain focused on their primary mission of securing our border. Having better oversight and knowledge of contract utilization and support needs will help ensure that DHS has the appropriate resources in place to care for migrants and minimize the need to remove DHS personnel from their area of responsibility.

HEARINGS

The Committee held the following hearings in the 118th Congress that informed H.R. 4467:

On April 19, 2023, the Committee on Homeland Security held a hearing entitled “A Review of the Fiscal Year 2024 Budget Request for the Department of Homeland Security.” The Committee received testimony from the Honorable Alejandro Mayorkas, Secretary, U.S. Department of Homeland Security.

COMMITTEE CONSIDERATION

The Committee met on Wednesday, July 12, 2023, a quorum being present, to consider H.R. 4467 and ordered the measure to be favorably reported to the House, as amended, by voice vote.

COMMITTEE VOTES

Clause 3(b) of rule XIII requires the Committee to list the recorded votes on the motion to report legislation and amendments thereto.

No recorded votes were requested during consideration of H.R. 4467.

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII, the Committee advises that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X, are incorporated in the descriptive portions of this report.

CONGRESSIONAL BUDGET OFFICE ESTIMATE, NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

With respect to the requirements of clause 3(c) of rule XIII and section 308(a) of the Congressional Budget Act of 1974, and with

²“Management Alert—CBP Needs to Award A Medical Services Contract Quickly to Ensure No Gap in Services (OIG-20-70),” DHS Office of Inspector General, (Sept. 3, 2020), available at <https://www.oig.dhs.gov/sites/default/files/assets/Mga/2020/oig-20-70-sep20-mgmtalert.pdf>.

³“Southwest Land Border Encounters.” U.S. Customs and Border Protection, (September 18, 2023). Available at <https://www.cbp.gov/newsroom/stats/southwest-land-border-encounters>.

respect to the requirements of clause 3(c)(3) of rule XIII and section 402 of the Congressional Budget Act of 1974, the Committee adopts as its own the estimate of any new budget authority, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures contained in the cost estimate prepared by the Director of the Congressional Budget Office.

H.R. 4467, DHS Border Services Contracts Review Act			
As ordered reported by the House Committee on Homeland Security on July 12, 2023			
By Fiscal Year, Millions of Dollars	2023	2023-2028	2023-2033
Direct Spending (Outlays)	0	0	0
Revenues	0	0	0
Increase or Decrease (-) in the Deficit	0	0	0
Spending Subject to Appropriation (Outlays)	0	2	not estimated
Increases <i>net direct spending</i> in any of the four consecutive 10-year periods beginning in 2034?	No	Statutory pay-as-you-go procedures apply?	No
Increases <i>on-budget deficits</i> in any of the four consecutive 10-year periods beginning in 2034?	No	Mandate Effects	
		Contains intergovernmental mandate?	No
		Contains private-sector mandate?	No

H.R. 4467 would require the Department of Homeland Security (DHS) to submit a report to the Congress on its active contracts that are above \$50 million and that relate to U.S.-Mexico border security. The report must include recommendations to enhance coordination of services, minimize overlap, and increase cost effectiveness of those contracts. H.R. 4467 also would require DHS to submit a plan to the Congress on how to implement its recommendations. Under the bill, DHS would be required to brief the Congress on that plan every 180 days until it is fully implemented.

Based on the costs of similar activities, CBO estimates that implementing H.R. 4467 would cost \$2 million for personnel, administrative, and contractor support over the 2024–2028 period. Such spending would be subject to the availability of appropriated funds.

The CBO staff contact for this estimate is Jeremy Crimm. The estimate was reviewed by Ann E. Futrell, Senior Adviser for Budget Analysis.

PHILLIP L. SWAGEL,
Director, Congressional Budget Office.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act of 1995.

DUPPLICATIVE FEDERAL PROGRAMS

Pursuant to clause 3(c) of rule XIII, the Committee finds that H.R. 4467 does not contain any provision that establishes or reauthorizes a program known to be duplicative of another Federal program.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII, the objective of H.R. 4467 is to enhance coordination, minimize overlap, and to increase cost effectiveness among those contracts for covered services performed by contractor personnel along the border of the United States.

CONGRESSIONAL EARMARKS, LIMITED TAX BENEFITS, AND LIMITED TARIFF BENEFITS

In compliance with rule XXI, this bill, as reported, contains no congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e), or 9(f) of rule XXI.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act (5 U.S.C. § 1004) were created by this legislation.

APPLICABILITY TO THE LEGISLATIVE BRANCH

The Committee finds that H.R. 4467 does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

This section states that the Act may be cited as the “DHS Border Services Contracts Review Act.”

Sec. 2. Assessment of contracts for covered services by the Department of Homeland Security

This section requires that not later than 180 days after the date of the enactment of this Act, the USM for DHS shall submit to the House Committee on Homeland Security and Senate Committee on Homeland Security and Governmental Affairs a report on active contracts of \$50,000,000 or more that were awarded on or before September 30, 2023, or the date of the enactment of this Act, whichever occurs later. The required report shall include the criteria used by DHS to determine whether contractor personnel were necessary to assist the Department in carrying out its mission along the United States land border with Mexico.

The report shall also include an analysis of the effectiveness of contracts in meeting mission needs, assessments of the benefits of using contracts and opportunities to increase efficiency, a strategy to improve the procurement and delivery of services through contracts, recommendations based on findings resulting from the analysis and assessments.

This section also requires that the USM transmit an implementation plan with the required report that includes a plan to implement the recommendations and strategy contained in the report to enhance coordination, minimize overlap, and increase cost effectiveness among contracts.

Further, this section requires that the USM brief the House Committee on Homeland Security and Senate Committee on Home-

land Security and Governmental Affairs not later than 180 days after submission of the required report and implementation plan, and every 180 days thereafter, until the plan is fully implemented.

